

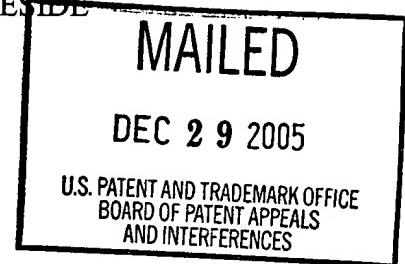
The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANDY D. PETREA,
ROBERT L. SCHUETTE and SHIRLEY A. WHITESIDE

Application No. 09/851,042



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on October 5, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

A review of the file indicates that on March 11, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c), which appellants erroneously refer to 37 CFR

§ 1.192 on the title page. Accordingly, the Appeal Brief filed on March 11, 2005, does not fully comply with the new rules under 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) **Evidence appendix.** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) **Related proceedings appendix.** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed March 11, 2005:

- 1) "Evidence Appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related Proceedings Appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

EXAMINER'S ANSWER

Appellant filed an Amendment dated May 10, 2004, wherein he canceled claims 43-46. On October 5, 2004, a Final Rejection was mailed, which included acknowledgment and entry of the amendment and of the cancelled claims 43-46, while at the same time rejected those same cancelled claims 43-46 under 103(a) over Krall (5,976,562), Kanto Plast Kogyo KK (JP09-02537) and Nippon Miractran KK. (JP11-028797) . On May 27, 2005, an Examiner's Answer was mailed, which included and/or repeated the rejection of canceled claims 43-46 under 35 U.S.C 103(a) over Krall (5,976,562), Kanto Plast Kogyo KK (JP09-02537) and Nippon Miractran KK. (JP11-028797). Clarification of the rejection regarding claims 43-46 is required.

A further review of the Examiner's Answer mailed May 27, 2005, reveals that it is not in compliance with the headings as set forth in the new rules under 37 CFR § 41.37(c). Accordingly, correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

1) hold the Appeal Brief filed on March 11, 2005, defective;

2) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR

§ 41.37;

3) to vacate the Examiner's Answer mailed May 27, 2005, to consider the supplemental

Appeal Brief which may be filed; clarify the rejection of claims 43-46 under 35 U.S.C. 103(a)

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and; submit a revised Examiner's Answer in accordance with the new rules effective September 13, 2004; and

4) for such further action as may be appropriate.

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